

REFERENCE TITLE: **health care; presumptions**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1501

Introduced by
Senators Martin, Bee, Gould, Harper; Representatives Quelland: Yarbrough

AN ACT

AMENDING SECTIONS 14-5312, 36-3204 AND 36-3206, ARIZONA REVISED STATUTES;
AMENDING TITLE 36, CHAPTER 32, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 36-3211; RELATING TO LIVING WILLS AND HEALTH CARE DIRECTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 14-5312, Arizona Revised Statutes, is amended to
3 read:

4 14-5312. General powers and duties of guardian

5 A. A guardian of an incapacitated person has the same powers, rights
6 and duties respecting the guardian's ward that a parent has respecting the
7 parent's unemancipated minor child, except that a guardian is not liable to
8 third persons for acts of the ward solely by reason of the guardianship. In
9 particular, and without qualifying the foregoing, a guardian has the
10 following powers and duties, except as modified by order of the court:

11 1. To the extent that it is consistent with the terms of any order by
12 a court of competent jurisdiction relating to detention or commitment of the
13 ward, the guardian is entitled to custody of the person of the ward and may
14 establish the ward's place of abode within or without this state.

15 2. If entitled to custody of the ward, the guardian shall make
16 provision for the care, comfort and maintenance of the ward and, whenever
17 appropriate, arrange for the ward's training and education. Without regard
18 to custodial rights of the ward's person, the guardian shall take reasonable
19 care of the ward's clothing, furniture, vehicles and other personal effects
20 and commence protective proceedings if other property of the ward is in need
21 of protection.

22 3. **SUBJECT TO THE REQUIREMENTS OF SECTION 36-3211**, a guardian may give
23 any consents or approvals that may be necessary to enable the ward to receive
24 medical or other professional care, counsel, treatment or service.

25 4. If no conservator for the estate of the ward has been appointed,
26 the guardian may:

27 (a) Institute proceedings to compel any person under a duty to support
28 the ward or to pay sums for the welfare of the ward to perform such person's
29 duty.

30 (b) Receive money and tangible property deliverable to the ward and
31 apply the money and property for support, care and education of the ward, but
32 the guardian may not use funds from his ward's estate for room and board the
33 guardian or the guardian's spouse, parent or child has furnished the ward
34 unless a charge for the service is approved by order of the court made upon
35 notice to at least one of the next of kin of the ward, if notice is
36 possible. He must exercise care to conserve any excess for the ward's needs.

37 5. A guardian is required to report the condition of the ward and of
38 the estate that has been subject to the guardian's possession or control, as
39 required by the court or court rule.

40 6. If a conservator has been appointed, all of the ward's estate
41 received by the guardian in excess of those funds expended to meet current
42 expenses for support, care and education of the ward shall be paid to the
43 conservator for management as provided in this chapter and the guardian must
44 account to the conservator for funds expended.

1 7. If appropriate, a guardian shall encourage the ward to develop
2 maximum self-reliance and independence and shall actively work toward
3 limiting or terminating the guardianship and seeking alternatives to
4 guardianship.

5 8. A guardian shall find the most appropriate and least restrictive
6 setting for the ward consistent with the ward's needs, capabilities and
7 financial ability.

8 9. A guardian shall make reasonable efforts to secure appropriate
9 medical and psychological care and social services for the ward.

10 10. A guardian shall make reasonable efforts to secure appropriate
11 training, education and social and vocational opportunities for his ward in
12 order to maximize the ward's potential for independence.

13 11. In making decisions concerning his ward, a guardian shall take into
14 consideration the ward's values and wishes.

15 12. The guardian is authorized to act pursuant to title 36, chapter 32.

16 13. The guardian of an incapacitated adult who has a developmental
17 disability as defined in section 36-551 shall seek services that are in the
18 best interest of the ward, taking into consideration:

19 (a) The ward's age.

20 (b) The degree or type of developmental disability.

21 (c) The presence of other handicapping conditions.

22 (d) The guardian's ability to provide the maximum opportunity to
23 develop the ward's maximum potential, to provide a minimally structured
24 residential program and environment for the ward and to provide a safe,
25 secure, and dependable residential and program environment.

26 (e) The particular desires of the individual.

27 B. Any guardian of a ward for whom a conservator also has been
28 appointed shall control the custody and care of the ward and is entitled to
29 receive reasonable sums for the guardian's services and for room and board
30 furnished to the ward as agreed upon between the guardian and the conservator
31 if the amounts agreed upon are reasonable under the circumstances. The
32 guardian may request the conservator to expend the ward's estate by payment
33 to third persons or institutions for the ward's care and maintenance.

34 Sec. 2. Section 36-3204, Arizona Revised Statutes, is amended to read:

35 36-3204. Responsibilities of health care providers

36 A. A health care provider shall comply with health care decisions made
37 by the patient's surrogate unless those decisions are inconsistent with the
38 patient's health care directive as known to the provider or the provider has
39 transferred responsibility to another provider pursuant to section 36-3205,
40 subsection C, paragraph 1. If the directive requires provision of treatment,
41 food or fluids that would have a **significant** possibility of sustaining the
42 patient's life, the provider shall ensure the provision until the transfer is
43 completed.

1 B. A health care provider has a duty to volunteer and otherwise
2 disclose information about the patient's health status and care to the
3 patient's surrogate to the same degree that the provider owes this duty to
4 the patient.

5 Sec. 3. Section 36-3206, Arizona Revised Statutes, is amended to read:

6 36-3206. Enforcement or challenge of a directive or decision:
7 judicial proceedings

8 A. An interested person may file a verified petition with the superior
9 court to determine the validity or effect of a health care directive or the
10 decision of a surrogate.

11 B. The petition shall include the following information:

12 1. The name and current location of the patient and any surrogate
13 authorized to make decisions for the patient.

14 2. The name and address of any health care provider known by the
15 petitioner to be providing health care to the principal.

16 3. A description or a copy of the health care directive.

17 4. The judicial relief sought by the petitioner.

18 C. The court shall review the petition, any other pleadings on file
19 and any evidence offered by the petitioner to determine if it should order
20 temporary orders without a further hearing. The court may enter a temporary
21 order directing the provision ~~or the withholding~~ of specific medical
22 treatment pending a further hearing if the court determines that there is
23 reasonable cause to believe that health care decisions are being made by a
24 surrogate or a health care provider that derogate the patient's wishes or, if
25 the patient's wishes are not known, the patient's best interests.

26 D. A WITHDRAWAL OF FOOD OR FLUID SHALL NOT TAKE PLACE UNTIL ALL
27 APPEALS ARE EXHAUSTED.

28 D. E. The court shall schedule and conduct a hearing within five
29 working days of the filing of a petition. Notice shall be provided by
30 personal service on the surrogate, the patient, the health care providers
31 immediately responsible for the patient's care, and other persons the court
32 requires to be notified.

33 E. F. On the filing of the petition, the court may:

34 1. Appoint an attorney for the patient if it appears that this is in
35 the patient's best interests.

36 2. Appoint an investigator as provided under section 14-5308 or a
37 physician, or both, to evaluate the patient and submit a written report to
38 the court before the hearing.

39 3. Enter other temporary orders that the court determines are
40 necessary and appropriate to protect the wishes or the best interests of the
41 patient, including an order exercising the power of a guardian or appointing
42 a temporary guardian as provided under section 14-5310.

43 F. G. A person filing a petition under this section is not required
44 to post a bond unless the court determines that a bond is necessary to
45 protect the interests of any party.

1 G. H. On notice and a hearing, the court may enter appropriate orders
2 to safeguard the wishes of the patient. If the court is unable to determine
3 those wishes, the court may enter appropriate orders to safeguard the
4 patient's best interest. These orders may include:

5 1. Appointing a surrogate if the procedural requirements of title 14,
6 chapter 5, article 3 have been met.

7 2. Removing an agent or any other surrogate and appointing a
8 successor.

9 3. Directing compliance with the terms of the patient's health care
10 directive, including the provisional removal or withholding of treatment if
11 the court finds that this conforms with the patient's wishes ~~or, if the~~
~~patient's wishes are not known, is in the patient's best interest.~~

12 4. Directing the transfer of the patient to a suitable facility or to
13 the care of a health care provider who is willing to comply with the
14 patient's wishes.

15 5. Assessing court costs and attorney fees against a party found to
16 have proceeded in bad faith.

17 H. I. Notwithstanding a person's incapacity, the court may deny a
18 petition to appoint a guardian for that person based on the existence of a
19 valid and unrevoked health care directive.

20 I. J. A guardian appointed pursuant to this section is immune from
21 civil and criminal liability to the same extent as any other surrogate
22 pursuant to section 36-3203, subsection D.

23 Sec. 4. Title 36, chapter 32, article 1, Arizona Revised Statutes, is
24 amended by adding section 36-3211, to read:

25 36-3211. Presumption of care to sustain life: exceptions:
26 definition

27 A. EXCEPT AS PRESCRIBED IN THIS SECTION, IT IS PRESUMED THAT A PATIENT
28 HAS DIRECTED THE PATIENT'S HEALTH CARE PROVIDERS TO PROVIDE THE PATIENT WITH
29 FOOD AND FLUID TO A DEGREE THAT IS SUFFICIENT TO SUSTAIN THE PATIENT'S LIFE.

30 B. A GUARDIAN, A SURROGATE, A PUBLIC OR PRIVATE AGENCY, A COURT OR ANY
31 OTHER PERSON DOES NOT HAVE THE AUTHORITY TO MAKE A DECISION ON BEHALF OF A
32 PATIENT TO WITHHOLD OR WITHDRAW FOOD OR FLUID EXCEPT IN THE CIRCUMSTANCES AND
33 UNDER THE CONDITIONS PRESCRIBED IN THIS SECTION.

34 C. THE PRESUMPTION PRESCRIBED IN THIS SECTION DOES NOT APPLY IF:

35 1. IN REASONABLE MEDICAL JUDGMENT:

36 (a) THE PROVISION OF FOOD AND FLUID IS NOT MEDICALLY POSSIBLE.

37 (b) THE PROVISION OF FOOD AND FLUID WOULD HASTEN DEATH.

38 (c) THE PROVISION OF FOOD AND FLUID WOULD NOT SUSTAIN THE PATIENT'S
39 LIFE BECAUSE THE PATIENT'S MEDICAL CONDITION PREVENTS THE PATIENT FROM
40 DIGESTING OR ABSORBING THE FOOD AND FLUID.

41 2. THE PATIENT EXECUTED A LIVING WILL PURSUANT TO THIS CHAPTER THAT
42 SPECIFICALLY AUTHORIZES THE WITHHOLDING OR WITHDRAWAL OF FOOD OR FLUID.

1 3. THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE PATIENT, WHEN
2 LEGALLY CAPABLE OF MAKING HEALTH CARE DECISIONS, GAVE EXPRESS AND INFORMED
3 CONSENT TO WITHDRAW OR WITHHOLD FOOD OR FLUID IN THE APPLICABLE
4 CIRCUMSTANCES.

5 4. THE PATIENT EXECUTED A HEALTH CARE POWER OF ATTORNEY IN ACCORDANCE
6 WITH THIS CHAPTER, SUBJECT TO ANY LIMITATION ON THE AUTHORITY OF THE AGENT
7 INDICATED BY EXPRESS LANGUAGE IN THE POWER OF ATTORNEY.

8 D. EXCEPT AS PRESCRIBED IN SUBSECTION C, A PERSON AUTHORIZED TO MAKE
9 HEALTH CARE DECISIONS FOR A PATIENT SHALL NOT AUTHORIZE THE WITHDRAWAL OF
10 FOOD AND FLUID THAT THE PATIENT MAY INGEST THROUGH NATURAL MEANS.

11 E. FOR THE PURPOSES OF THIS SECTION, "EXPRESS AND INFORMED CONSENT"
12 MEANS CONSENT THAT IS VOLUNTARILY GIVEN WITH SUFFICIENT KNOWLEDGE OF THE
13 SUBJECT MATTER INVOLVED, INCLUDING A GENERAL UNDERSTANDING OF THE PROCEDURE,
14 THE MEDICALLY ACCEPTABLE ALTERNATIVE PROCEDURES OR TREATMENTS AND THE
15 SUBSTANTIAL RISKS AND HAZARDS INHERENT IF THE PROPOSED TREATMENT OR
16 PROCEDURES ARE CARRIED OUT AND IF THEY ARE NOT CARRIED OUT, TO ENABLE THE
17 PERSON GIVING CONSENT TO MAKE AN INFORMED DECISION WITHOUT ANY ELEMENT OF
18 FORCE, FRAUD, DECEIT, DURESS OR OTHER FORM OF CONSTRAINT OR COERCION.